

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed August 24, 2006. With the prior cancellation of claims 5, 11-26 and 33-37, and the current cancellation of claim 32, claims 1-4, 6-10, 27-31 and 38 are presented herewith.

Objection to Claim 1

Claim 1 is objected to because it contained an informality. The informality has been corrected and it is therefore respectfully requested that the objection to claim 1 be withdrawn.

Rejection of Claim 4 Under 35 U.S.C. §112

Claim 4 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 has been amended in a way to overcome this rejection, and it is respectfully requested that the rejection on these grounds be withdrawn.

Rejection of Claims 1-3 and 8-10 Under the Judicially Created Doctrine of Obviousness-Type Double Patenting

Claims 1-3 and 8-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 4, 5, 7, 8, 10, 14, 15, 23, 25, 28, 32, 34, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 54, 56, 58, 60, 66, 68 and 69 of U.S. Patent No. 6,694,336 (“the ‘336 Patent”).

In determining whether the claims of the later application are obvious variants, the analysis is substantially the same as that under §103. *In re Braat*, 937 F.2d. 589, 592-93 (Fed. Cir. 1991). In performing this obviousness analysis, it is the issued patent claim itself, and not the disclosure of the issued patent in general, that may be used by the examiner as a basis for comparison in an obviousness-type double patenting rejection. *In re Bartfeld*, 925 F.2d 1450, 1453 (Fed. Cir. 1991).

In making the rejection on these grounds, applicants respectfully submit that the Examiner has improperly focused initially on the disclosure of the ‘336 Patent as a whole. The Examiner has stated, “Although the conflicting claims are not identical, they are not patentably distinct from each other because the *patent* teaches all the limitations as disclosed...” As indicated above, it is not the patent, but the claims themselves, which must be used when determining whether there is obviousness-type double patenting.

Based on these grounds, it is respectfully requested that the obviousness-type double patenting rejection be withdrawn. After consideration of this response, in the event that this obviousness-type double patenting rejection is the sole remaining rejection, applicants would consider anew whether to file a terminal disclaimer.

Rejection of Claims 1-3 and 7-10 Under 35 U.S.C. §103(a)

Claims 1-3 and 7-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,039,656 to Tsai et al. (“Tsai”) in view of U.S. Patent No. 7,020,704 to Lipscomb et al. (“Lipscomb”). Applicants respectfully traverse the rejection as follows.

Tsai discloses a synchronization system where data records are converted into a 32 bit number using a known cyclic redundancy check (CRC) hash function. On the client side, data records are converted into a CRC number and stored in a first table within device 109 or PC 113. The table is then sent to a server upon a synch request. The server similarly stores data records, which are similarly converted into a CRC number and stored within a second table. The received first table is compared against the stored second table to determine what data the device 109/PC 113 does not have.

Applicants’ claim 1 recites in part:

- (b) obtaining difference information comprising differences between a representation of at least a portion of the media data and a representation of a copy of at least a portion of the media data from a prior point in time;

This feature is nowhere disclosed, taught or suggested in either Tsai or Lipscomb, or a combination of the two. The Examiner has indicated that this feature is shown in Tsai. However, applicants respectfully disagree. For example, the above clause recites that the difference information comprises differences “between … media data and… a copy of… the media data.” Tsai does not generate difference information by comparing data with a copy of the data. In particular, referring to Fig. 8, Tsai includes the “User CRC table” 131 including CRC numbers received from the user. Tsai also includes the “source data records” 135, which is processed by the CRC function to generate the “Source CRC table” 143. The User CRC table 131 is compared against the Source CRC table 143 to identify what records the User CRC table does not have.

However, neither the source data records 135, nor the Source CRC table 143 generated therefrom, are *copies* of the user data. As stated in Tsai at column 15, lines 36-44:

Also illustrated within communication layer 129 is a block representing source data records 135 that are compiled and in some cases aggregated for a user. Block 135 will hereinafter be termed records 135 for the purpose of discussion. Records 135 may be internally sourced or created, or they may be obtained from other network sources already in the form of data records having a header and a body and which are ready for computation and comparison. Records 135 are analogous to block list 121 of FIG. 7B.

It is clear from the express disclosure of Tsai that Tsai does not determine differences “between ... media data and... a copy of... the media data” as expressly recited in claim 1. In fact, the system of Tsai is identical to conventional synch systems, except that instead of transmitting a first set of whole records for comparison against a stored second set of whole records, Tsai first processes the records to convert the records into CRC tables to save communication bandwidth.

As the above-described limitations are not disclosed in the cited references, taken alone or in combination with each other, it is respectfully requested that the rejection of claims 1-3 and 7-10 under 35 U.S.C. §103(a) be withdrawn.

Rejection of Claims 4 and 38 Under 35 U.S.C. §103(a)

Claims 4 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Lipscomb and in further view of U.S. Publication No. 2002/0091785 to Ohlenbusch et al. (“Ohlenbusch”).

Claims 4 and 38 depend on independent claim 1. As indicated above, claim 1 recites limitations which are nowhere disclosed, taught or suggested in Tsai or Lipscomb, taken alone or together. In particular, the references fail to teach or suggest obtaining difference information comprising differences “between ... media data and... a copy of... the media data.” Ohlenbusch adds nothing to the teaching of those references in this regard.

It is therefore respectfully requested that the rejection of claims 4 and 38 under 35 U.S.C. §103(a) be withdrawn.

Rejection of Claim 6 Under 35 U.S.C. §103(a)

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Lipscomb and in further view of U.S. Patent No. 6,812,961 to Parulski et al. (“Parulski”).

Claim 6 depends on independent claim 1. As indicated above, claim 1 recites limitations which are nowhere disclosed, taught or suggested in Tsai or Lipscomb, taken alone or together. In particular, the references fail to teach or suggest obtaining difference information comprising differences “between … media data and… a copy of… the media data.” Parulski adds nothing to the teaching of those references in this regard.

It is therefore respectfully requested that the rejection of claim 6 under 35 U.S.C. §103(a) be withdrawn.

Rejection of Claims 27-32 Under 35 U.S.C. §103(a)

Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2001/0047393 to Arner et al. (“Arner”) in view of *Tsai*.

Independent claim 27 has been substantially amended in a way that is believed to distinguish over the cited references. Claim 27 as amended recites a system including media data, a copy of the media data and a device engine for comparing the two. In view of these amendments, it is respectfully requested that the rejection of claims 27-32 under 35 U.S.C. §103(a) be withdrawn.

Based on the above amendments and these remarks, reconsideration of the pending claims is respectfully requested.

The Examiner’s prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, February 26, 2007.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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